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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re ZAIDEN H., a Person Coming
Under the Juvenile Court Law.

BUTTE COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MICHELLE H.,

Defendant and Appellant.

C067596

(Super. Ct. No. J35582)

Michelle H., mother of the minor, appeals from orders of the juvenile court dismissing the petition and giving custody of the two-year-old minor to his father. (Welf. & Inst. Code, §§ 390, 395.)¹ Mother contends the order was not supported

¹ Undesignated statutory references are to the Welfare and Institutions Code.

by substantial evidence and the court failed to make the required findings. We affirm.

FACTUAL AND PROCEDURAL HISTORY

The minor was removed from the mother's custody in November 2010. The petition filed by the Butte County Department of Employment and Social Services (DESS) alleged that the mother's substance abuse and neglect placed the minor at substantial risk of serious physical harm. This occurred after narcotics agents executed a search warrant at the house where mother, her boyfriend, the minor, and one other minor were residing.² The agents had information that the mother's boyfriend had been involved in manufacturing and selling methamphetamine, and discovered he was involved in drug transactions in the home. Methamphetamine, marijuana, scales, and packaging materials were found at the house, and the house was in a dirty, unkempt condition. The mother admitted knowledge that the boyfriend sold drugs. As to the minor's father, the petition alleged that the father had a child welfare and criminal history that was of concern, but there were no current allegations regarding him.

The detention report stated there was no child welfare history as to this minor, but two of his half siblings, children of the father, previously had been adjudicated dependents. The social worker spoke to the father by telephone the day the minor was removed from mother's home. The father stated he had had

² Mother's boyfriend is the father of the other minor.

regular visitation with the minor until recently, when mother refused to maintain contact. The father admitted that he had a child welfare and criminal history and that he had been discharged from parole in 2007. He stated that only one of his six children was in his care. The report stated that before the minor could be returned to parental care, the parents had to participate in substance abuse, parenting and counseling programs.

The father had been living in Oklahoma. He filed a parentage statement which stated that he had paid child support and had visited the minor regularly until he moved to Oklahoma. Thereafter, he had the minor for several weeks in Oklahoma but had not visited for the last six or seven months due to mother's refusal to communicate.

At the December 21, 2010 jurisdiction hearing, the court declared the father to be a presumed father. The court also gave DESS discretion to place the minor with the father and set a contested jurisdiction hearing.

The jurisdiction report stated that two of the minor's half siblings had been removed from the father in 2003 and released to the care of their mother. At that time, the father's home was filthy, lacking in water and edible food and contained items that were hazardous to the minors. The father had two convictions in California. In 2004, he was convicted of felony obstructing/resisting an executive officer and providing false information, a misdemeanor, and was granted probation. In 2006, his probation was revoked and he was sentenced to state

prison. In 2008, he was convicted of driving under the influence (DUI) (alcohol) and was sentenced to two days in jail and granted probation. He had various arrests in California from 2002 to 2009, the last being for DUI (alcohol).

At the jurisdiction hearing in January 2011, county counsel requested to withdraw the petition. Mother objected. The hearing was continued to permit all counsel to review the request.

Mother's counsel filed points and authorities on the issue. Mother argued placement with the father could only occur pursuant to section 361.2 and DESS did not have the authority to simply withdraw the petition. He argued that the juvenile court must determine whether or not a petition must be dismissed, taking into account the interests of justice and the welfare of the minor.

Minor's counsel filed a declaration dated February 19, 2011, in which he stated that he was informed on January 24, 2011 that the minor had been placed with the father in Oklahoma on January 21, 2011. Minor's counsel stated that he "oppose[d] dismissal[] or termination of jurisdiction at this time."

On February 23, 2011, the juvenile court held an order to show cause hearing. The current social worker testified she did not do the initial assessment on the father because she was not the social worker on the case at that time. However, she had spoken to the father on December 6, 2010 and she felt he was very frank in his discussions of his criminal history, including prison time and DUI convictions. The father told her he was

currently employed and was buying a home. Initially, the social worker had concerns about both an earlier child welfare case in 2003, in which two children were removed from the father's care and released to their mother, and the father's criminal history in both California and Oklahoma, which included a DUI and an assault conviction in Oklahoma in 2005 and another DUI conviction in California in 2008. The father told the social worker he had participated in services in prison and had an alcohol and drug assessment in Oklahoma in October 2010 (approximately one month prior to the filing of the petition), which determined he needed no services. Thus, while the father's history was of concern, the social worker felt it would have been difficult to require services if a professional counselor had concluded he did not need them. The social worker also spoke to a social worker in Oklahoma, who sent her an e-mail which stated that there had been some child welfare contact with the father's household in early 2010, but that no allegations had been made against the father. The e-mail further stated that the father had taken responsibility and appropriate action at that time. The e-mail also confirmed the father's 2005 Oklahoma assault and DUI convictions and stated that the records showed no law enforcement contact since that time. The father was current on payment of his fines in Oklahoma. The social worker stated that if the father had been local, DESS would have released the minor to him. The social worker further testified that, when the father flew to California, she met with him three times and checked the home

where he was staying. The father admitted his prior drug use and was forthcoming about his DUI convictions. Prior to his first visit with the minor, the social worker tested the father for drugs and the results were negative. Because he admitted drinking a couple of beers the night before, she did not test the father for alcohol. The father was appropriate during his visitation with the minor. The social worker did not corroborate all of father's information but did contact him at his workplace.

The supervising social worker also testified. He approved the decision to send the minor to Oklahoma after reading the Oklahoma social worker's e-mail, considering the social worker's information, and running a child welfare check on the father regarding the previous referral. He also approved the social worker's plan to withdraw the petition. There was no current information the minor was at risk of harm with the father in Oklahoma. He stated that the social worker had checked on the minor in the last two weeks and, according to the father, things were going well. He observed that a number of people who are on probation and delinquent on fines take good care of their children and, based on the information from the social workers who had been assigned to the case, the father is one of them. The analysis on returning the minor was that it was better for the minor to be with the father than in foster care.

Mother testified at length about the past risks the father had presented to the minor because of his drinking and her belief that he continued to present a risk potential.

However, she also testified that she believed the father could take care of the minor if he was not drinking. Further, she voluntarily allowed the minor to go to Oklahoma to visit the father when the minor was 10 or 11 months old so the minor could get to know his father. She allowed the visit because she believed the father had received help in prison to address his drinking.

The court observed that minor's counsel had withdrawn the objection to the DESS request to withdraw the petition.

The court found no evidence the minor currently was at risk. The court further found there was no credible evidence the father was currently drinking, observing that mother had made no reports to anyone that the minor was in danger and had testified the minor was not in danger if the father was not drinking. The court found dismissal was in the interest of justice and "in the welfare of the minor" and dismissed the petition.

DISCUSSION

Mother contends substantial evidence did not support the juvenile court's order dismissing the dependency and that the court failed to make all the required findings.

I. Finding Regarding the Need for Treatment and Rehabilitation

The court dismissed the petition pursuant to section 390. That section provides: "A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the

interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation."

Mother asserts that the juvenile court "failed to" find that "the parent" was not in need of treatment or rehabilitation. However, "'the parent' mentioned in section 390 is the one who was the custodial parent prior to the initiation of the dependency proceedings and whose actions or neglect resulted in the dependency proceedings." (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1498, disapproved on another ground by *In re Chantal S.* (1996) 13 Cal.4th 196, 204.) Here, the minor was released to a previously noncustodial parent. The juvenile court did not err in failing to make the finding.

II. Substantial Evidence

When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*Jason L.*, *supra*, 222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of

the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The evidence before the juvenile court showed, at most, that the father had presented a risk to the minor in the past. There were no allegations of current risk in the petition. Further, based on a recent assessment from Oklahoma, he was not in need of services at the time of the hearing. The father had no current criminal activity and no current child welfare allegations against him. He was working, had a home, and the minor was doing well in his care. While the social worker could have done more investigation, the information that was obtained and provided to the juvenile court did not indicate the minor would be at risk with the father. No additional investigation was legally required.³

The purpose of dependency proceedings is to protect the child. (§ 300.2.) If the child is not at risk in parental custody, further detention cannot be justified.⁴ The court

³ There was some discussion at the hearing about whether an Interstate Compact on the Placement of Children home study should have been done. (Fam. Code, § 7901.) Such a study is applicable only to a foster placement or as a preliminary to a possible adoption and is not required for placement with an out-of-state parent. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1574-1575.) Such a vehicle might be used, if the other state agreed, to gather evidence on risk of placement. However the process is often delayed and, absent evidence to suggest current risk, would not be justified in light of the minor's strong interest in being placed with a parent.

⁴ Mother highlights the statutory requirement that "the welfare of the minor require[s] . . . dismissal." (*Italics omitted.*)

resolved conflicts in the evidence and credibility issues adversely to mother in finding there was no current risk to the minor in the father's custody and that dismissal was in the interests of justice. Substantial evidence supports the court's findings that the interest of justice and the minor's welfare required dismissal of the petition.

DISPOSITION

The order of dismissal is affirmed.

_____, MURRAY, J.

We concur:

_____, RAYE, P. J.

_____, HOCH, J.

We observe that in the absence of risk to the minor here -- a finding we must uphold if there is substantial evidence supporting that finding -- there is no reason to detain the minor. Consequently, given that the court's finding was supported by substantial evidence, dismissal of the petition was required.